

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

LINDABETH RIVERA, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

JOSEPH WEISS, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Case No.: 1:16-cv-02714

Judge: Honorable Edmond E. Chang

Magistrate Michael T. Mason

Case No.: 1:16-cv-02870

Judge: Honorable Edmond E. Chang

Magistrate Michael T. Mason

**GOOGLE INC.’S CONSOLIDATED MOTION TO DISMISS THE CLASS ACTION
COMPLAINTS OF PLAINTIFFS LINDABETH RIVERA AND JOSEPH WEISS**

Defendant Google Inc. (“Google”) hereby moves this Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for an order dismissing the Class Action Complaints of Plaintiffs Lindabeth Rivera and Joseph Weiss (“Plaintiffs”) with prejudice. Google has conferred with Plaintiffs and Plaintiffs oppose this Motion. In support of its Motion, Google states as follows:

1. On March 1, 2016 and March 4, 2016, respectively, Plaintiffs filed Class Action Complaints against Google Inc. alleging violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1 *et seq.* in connection with Google Photos, a service that helps users store and organize photos.

2. On March 30, 2016, Google moved for an extension to May 18, 2016 of the deadline to answer or otherwise plead, which the Court granted. *Rivera* Dkt. 11; *Weiss* Dkt.

11. On April 1, Rivera filed an uncontested motion to reassign Weiss to this Court's calendar, which the Court also granted. *Rivera* Dkt. 11, 15; *see also* *Weiss* Dkt. 12, 13. On May 9, the Court granted Google's agreed motion to file a single consolidated motion to dismiss both the *Rivera* and *Weiss* Complaints. *Rivera* Dkt. 30; *Weiss* Dkt. 27.

3. Google moves to dismiss these actions with prejudice on two separate grounds, as more fully set forth in Google's Memorandum of Law in Support of Its Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6), filed contemporaneously herewith and incorporated herein.

4. First, BIPA expressly does not regulate photos or information derived from photos. Thus, BIPA does not apply to the Google Photos service.

5. Second, under Plaintiffs' interpretation of BIPA, the statute would effectively regulate conduct occurring wholly outside Illinois' borders, which would violate the dormant Commerce Clause of the United States Constitution.

WHEREFORE, for the reasons set forth herein and in Google's Memorandum of Law in Support of Its Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6), Google respectfully requests that this Court dismiss Plaintiffs' Complaints with prejudice and for such other and further relief the Court deems necessary and proper in the interests of justice.

Dated: May 18, 2016

GOOGLE INC.,

By: /s/ Susan D. Fahringer
Susan D. Fahringer

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